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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TONY MAURICE BELFIELD,
Petitioner,
v.
M. E. SPEARMAN,
Respondent.

Case No. [19-cv-05819-JCS](#) (PR)

ORDER TO SHOW CAUSE

Dkt. Nos. 2, 3, and 6

INTRODUCTION

Petitioner seeks federal habeas relief under 28 U.S.C. § 2254 from his state convictions. The petition for such relief is here for review under 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

The petition states cognizable claims. On or before **February 18, 2020**, respondent shall file in response to the petition an answer or a dispositive motion.

Petitioner has consented to magistrate jurisdiction. (Dkt. No. 4.) Respondent must also consent if the undersigned is to continue as the presiding judge in this action.

BACKGROUND

According to the petition in 2016, a Contra Costa Superior Court jury convicted petitioner of second degree murder, shooting at a person from a motor vehicle, and unlawfully possessing a firearm. A sentence of 75 years to life was imposed.

Petitioner sought but was denied relief on state review. This federal habeas petition followed.

DISCUSSION

This Court may entertain a petition for writ of habeas corpus “in behalf of a person

1 in custody pursuant to the judgment of a State court only on the ground that he is in
2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
3 § 2254(a). A district court considering an application for a writ of habeas corpus shall
4 “award the writ or issue an order directing the respondent to show cause why the writ
5 should not be granted, unless it appears from the application that the applicant or person
6 detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate
7 only where the allegations in the petition are vague or conclusory, palpably incredible, or
8 patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

9 As grounds for federal habeas relief, petitioner claims that (1) there were
10 instructional errors; (2) trial counsel rendered ineffective assistance; (3) the trial court
11 failed to provide the jury with an appropriate response to one of its questions; and (4) there
12 was prosecutorial misconduct (including *Griffin* error)¹ and the trial court erred in allowing
13 it. When liberally construed, these claims are cognizable on federal habeas review.

14 **MOTIONS**

15 Petitioner’s motion to proceed *in forma pauperis* is GRANTED. (Dkt. Nos. 3 and
16 6.)

17 Petitioner moves for the appointment of counsel because he is a schizophrenic and
18 the issues presented in the petition are complex. This motion is DENIED. (Dkt. No. 2.)
19 The case does not present factually or legally complex issues nor are there other reasons
20 justifying the appointment of counsel. 18 U.S.C. § 3006A. According to papers filed by
21 petitioner, his schizophrenia is currently being effectively treated with Haldol.
22 Furthermore, his filings are clear and well-reasoned.

23 **CONCLUSION**

24 1. The Clerk shall serve a copy of this order, the petition and all attachments
25 thereto, and a Magistrate Judge jurisdiction consent or declination to consent form on
26 respondent and respondent’s counsel, the Attorney General for the State of California. The
27

28 ¹ *Griffin v. California*, 380 U.S. 609 (1965).

1 Clerk shall also serve a copy of this order on petitioner.

2 2. On or before **February 18, 2020**, respondent shall file with the Court and serve
3 on petitioner an answer conforming in all respects to Rule 5 of the Rules Governing
4 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted
5 based on petitioner's cognizable claims. Respondent shall file with the answer and serve
6 on petitioner a copy of all portions of the state trial record that previously have been
7 transcribed and that are relevant to a determination of the issues presented by the petition.

8 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
9 with the Court and serving it on respondent's counsel within thirty (30) days of the date the
10 answer is filed.

11 4. In lieu of an answer, respondent may file, on or before **February 17, 2020**, a
12 motion to dismiss on procedural grounds, as set forth in the Advisory Committee Notes to
13 Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion,
14 petitioner shall file with the Court and serve on respondent an opposition or statement of
15 non-opposition within thirty (30) days of the date the motion is filed, and respondent shall
16 file with the Court and serve on petitioner a reply within fifteen (15) days of the date any
17 opposition is filed.

18 5. Petitioner is reminded that all communications with the Court must be served on
19 respondent by mailing a true copy of the document to respondent's counsel.

20 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
21 Court and respondent informed of any change of address and must comply with the
22 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this
23 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

24 7. Upon a showing of good cause, requests for a reasonable extension of time will
25 be granted provided they are filed on or before the deadline they seek to extend.

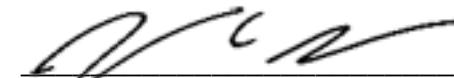
26 8. Petitioner's motion to proceed *in forma pauperis* is GRANTED. (Docket Nos. 3
27 and 6)

28 9. Petitioner's motion for the appointment of counsel is DENIED. (Dkt. No. 2.)

1 10. The Clerk shall terminate all pending motions.

2 **IT IS SO ORDERED.**

3 **Dated:** December 4, 2019



4 JOSEPH C. SPERO
5 Chief Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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TONY MAURICE BELFIELD,

Plaintiff,

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v.

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M. E. SPEARMAN,

Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

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That on December 4, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Tony Maurice Belfield ID: #T-30890
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127

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Dated: December 4, 2019

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Case No. 19-cv-05819-JCS

CERTIFICATE OF SERVICE

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO